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and the eligibility of the project to receive a loan guarantee under the applicable solicitation, the Act and this part.

Project costs means those costs, including escalation and contingencies, that are to be expended or accrued by Borrower and are necessary, reasonable, customary and directly related to the design, engineering, financing, construction, startup, commissioning and shakedown of an Eligible Project, as specified in § 609.12 of this part. Project costs do not include costs for the items set forth in § 609.12(c) of this part.

Project Sponsor means any person, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company or other business entity that assumes substantial responsibility for the development, financing, and structuring of a project eligible for a loan guarantee and, if not the Applicant, owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the proposed Eligible Project, or the Applicant.

Secretary means the Secretary of Energy or a duly authorized designee or successor in interest.

Term Sheet means an offering document issued by DOE that specifies the detailed terms and conditions under which DOE may enter into a Conditional Commitment with the Applicant. A Term Sheet imposes no obligation on the Secretary to enter into a Conditional Commitment.

United States means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or any territory or possession of the United States of America.

§ 609.3 Solicitations.

(a) DOE may issue solicitations to invite the submission of Pre-Applications or Applications for loan guarantees for Eligible Projects. DOE must issue a solicitation before proceeding with other steps in the loan guarantee process including issuance of a loan guarantee. A Project Sponsor or Applicant may only submit one Pre-Application or Application for one project using a particular technology. A Project Sponsor or Ap-

plicant, in other words, may not submit a Pre-Application or Application for multiple projects using the same technology.

(b) Each solicitation must include, at a minimum, the following information:

(1) The dollar amount of loan guarantee authority potentially being made available by DOE in that solicitation;

(2) The place and time for response submission;

(3) The name and address of the DOE representative whom a potential Project Sponsor may contact to receive further information and a copy of the solicitation;

(4) The form, format, and page limits applicable to the response submission;

(5) The amount of the application fee (First Fee), if any, that will be required;

(6) The programmatic, technical, financial and other factors the Secretary will use to evaluate response submissions, including the loan guarantee percentage requested by the Applicant and the relative weightings that DOE will use when evaluating those factors; and

(7) Such other information as DOE may deem appropriate.

§ 609.4 Submission of Pre-Applications.

In response to a solicitation requesting the submission of Pre-Applications, either Project Sponsors or Applicants may submit Pre-Applications to DOE. The information submitted in or in connection with Pre-Applications will be treated as provided in 10 CFR 600.15 and must be marked as provided in 10 CFR 600.15(b). Pre-Applications must meet all requirements specified in the solicitation and this part. At a minimum, each Pre-Application must contain all of the following:

(a) A cover page signed by an individual with full authority to bind the Project Sponsor or Applicant that attests to the accuracy of the information in the Pre-Application, and that binds the Project Sponsor(s) or Applicant to the commitments made in the Pre-Application. In addition, the information requested in paragraphs (b) and (c) of this section should be submitted in a volume one and the information requested in paragraphs (d) through (h) of this section should be submitted in a

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volume two, to expedite the DOE review process.

(b) An executive summary briefly encapsulating the key project features and attributes of the proposed project (for clarity, with respect to any project in which project assets or facilities are jointly owned by the Applicant and one or more other persons, each of whom owns an undivided ownership interest in such project assets or facilities, the Applicant may submit a project proposal with respect to its undivided ownership interest in such project assets or facilities);

(c) A business plan which includes an overview of the proposed project, including:

(1) A description of the Project Sponsor, including all entities involved, and its experience in project investment, development, construction, operation and maintenance;

(2) A description of the new or significantly improved technology to be employed in the project, including:

(i) A report detailing its successes and failures during the pilot and demonstration phases;

(ii) The technology's commercial applications;

(iii) The significance of the technology to energy use or emission control;

(iv) How and why the technology is "new" or "significantly improved" compared to technology already in general use in the commercial marketplace in the United States;

(v) Why the technology to be employed in the project is not in "general use;"

(vi) The owners or controllers of the intellectual property incorporated in and utilized by such technologies; and

(vii) The manufacturer(s) and licensee(s), if any, authorized to make the technology available in the United States, the potential for replication of commercial use of the technology in the United States, and whether and how the technology is or will be made available in the United States for further commercial use;

(3) The estimated amount, in reasonable detail, of the total Project Costs;

(4) The timeframe required for construction and commissioning of the project;

(5) A description of any primary off-take or other revenue-generating agreements that will provide the primary sources of revenues for the project, including repayment of the debt obligations for which a guarantee is sought.

(6) An overview of how the project complies with the eligibility requirements in section 1703 of the Act (42 U.S.C. 16513);

(7) An outline of the potential environmental impacts of the project and how these impacts will be mitigated;

(8) A description of the anticipated air pollution and/or anthropogenic greenhouse gas reduction benefits and how these benefits will be measured and validated; and

(9) A list of all of the requirements contained in this part and the solicitation and where in the Pre-Application these requirements are addressed;

(d) A financing plan overview describing:

(1) The amount of equity to be invested and the sources of such equity;

(2) The amount of the total debt obligations to be incurred and the funding sources of all such debt if available;

(3) The amount of the Guaranteed Obligation as a percentage of total project debt; and as a percentage of total project cost; and

(4) A financial model detailing the investments in and the cash flows generated and anticipated from the project over the project's expected life-cycle, including a complete explanation of the facts, assumptions, and methodologies in the financial model;

(e) An explanation of what estimated impact the loan guarantee will have on the interest rate, debt term, and overall financial structure of the project;

(f) Where the Federal Financing Bank is not the lender, a copy of a letter from an Eligible Lender or other Holder(s) expressing its commitment to provide, or interest in providing, the required debt financing necessary to construct and fully commission the project;

(g) A copy of the equity commitment letter(s) from each of the Project Sponsors and a description of the sources for such equity; and

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(h) A commitment to pay the Application fee (First Fee), if invited to submit an Application.

[74 FR 63549, Dec. 4, 2009, as amended at 76 FR 26582, May 9, 2011]

§ 609.5 Evaluation of Pre-Applications.

(a) Where Pre-Applications are requested in a solicitation, DOE will conduct an initial review of the Pre-Application to determine whether:

(1) The proposal is for an Eligible Project;

(2) The submission contains the information required by § 609.4 of this part; and

(3) The submission meets all other requirements of the applicable solicitation.

(b) If a Pre-Application fails to meet the requirements of paragraph (a) of this section, DOE may deem it non-responsive and eliminate it from further review.

(c) If DOE deems a Pre-Application responsive, DOE will evaluate:

(1) The commercial viability of the proposed project;

(2) The technology to be employed in the project;

(3) The relevant experience of the principal(s); and

(4) The financial capability of the Project Sponsor (including personal and/or business credit information of the principal(s)).

(d) After the evaluation described in paragraph (c) of this section, DOE will determine if there is sufficient information in the Pre-Application to assess the technical and commercial viability of the proposed project and/or the financial capability of the Project Sponsor and to assess other aspects of the Pre-Application. DOE may ask for additional information from the Project Sponsor during the review process and may request one or more meetings with the Project Sponsor. Any additional information submitted will be treated as provided in 10 CFR 600.15 and must be marked as provided in 10 CFR 600.15(b).

(e) After reviewing a Pre-Application and other information acquired under paragraph (c) of this section, DOE may provide a written response to the Project Sponsor or Applicant either inviting the Applicant to submit an Ap-

plication for a loan guarantee and specifying the amount of the Application filing fee (First Fee) or advising the Project Sponsor that the project proposal will not receive further consideration. Neither the Pre-Application nor any written or other feedback that DOE may provide in response to the Pre-Application eliminates the requirement for an Application.

(f) No response by DOE to, or communication by DOE with, a Project Sponsor, or an Applicant submitting a Pre-Application or subsequent Application shall impose any obligation on DOE to enter into a Loan Guarantee Agreement.

[74 FR 63549, Dec. 4, 2009, as amended at 76 FR 26582, May 9, 2011]

§ 609.6 Submission of Applications.

(a) In response to a solicitation or written invitation to submit an Application, an Applicant submitting an Application must meet all requirements and provide all information specified in the solicitation and/or invitation and this part. The information submitted in or in connection with Applications will be treated as provided in 10 CFR 600.15 and must be marked as provided in 10 CFR 600.15(b).

(b) An Application must include, at a minimum, the following information and materials:

(1) A completed Application form signed by an individual with full authority to bind the Applicant and the Project Sponsors;

(2) Payment of the Application filing fee (First Fee) for the Pre-Application, if any, and Application phase;

(3) A detailed description of all material amendments, modifications, and additions made to the information and documentation provided in the Pre-Application, if a Pre-Application was requested in the solicitation, including any changes in the proposed project's financing structure or other terms;

(4) A description of how and to what measurable extent the project avoids, reduces, or sequesters air pollutants and/or anthropogenic emissions of greenhouse gases, including how to measure and verify those benefits;

(5) A description of the nature and scope of the proposed project, including: